IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:16-CR-365
	)	
Plaintiff,	)	JUDGE SARA E. LIOI
	)	
v.	)	
	)	GOVERNMENT'S SENTENCING
DANIEL J. MERCEDE,	)	MEMORANDUM
	)	
Defendant.	)	

Now comes the United States of America, by and through its attorneys, David A. Sierleja, Acting United States Attorney, and Paul M. Flannery and Matthew B. Kall, Assistant United States Attorneys, and hereby submits this memorandum for the Court's consideration in determining a sentence for the defendant, Daniel J. Mercede, that is sufficient but not greater than necessary to comply with the purposes of sentencing. The Government submits that, after considering the 18 U.S.C. § 3553(a) factors, and in particular, the seriousness of the offense, and the need to deter the defendant and protect the public from the defendant's future crimes, a sentence at the highest end of the advisory Guidelines range is appropriate.

I. Nature and Seriousness of Offense

The nature of this offense was particularly serious, pervasive, and complex. From 2014 to 2016, the defendant engaged in several, different sophisticated fraud schemes in which he attempted to obtain more than $3 million in combined fraudulent proceeds and actually succeeded in obtaining more than $400,000. His offenses we especially complex in that they involved, among other things, wide-scale identity theft, fictitious bank accounts, and the illegal use of an unlicensed bitcoin exchange service. The defendant's identity theft was particularly egregious. He used stolen identity information of dozens of individual victims. He intentionally targeted individuals out of state or even those in the military in order to avoid detection and maximize success of the fraud. And all of this was motivated by greed. The defendant used the fraud proceeds for his own personal enrichment, which included luxury vehicles, expensive jewelry, and exotic vacations.

II. History and Characteristics of Defendant

The defendant's criminal conduct is not substantially mitigated by his history and characteristics. He is well educated, intelligent, and resourceful. He had all the opportunity in the world. Although the defendant contends he is a devoted family man, it is important to note that the government learned in its investigation that the defendant selfishly involved his own wife in his criminal conduct, thereby exposing her to potential criminal liability which could have had a catastrophic effect on her future career plans. Moreover, while the defendant may have a history of drug use, that did not alter his ability to understand right and wrong. If anything, it only served as a further motivation to victimize other people in order to obtain needed money.

III. Need for the sentence to adequately punish defendant, incapacitate defendant, and deter defendant and others.

The defendant has shown he is a serial fraud and identity thief and a clear economic danger to the community. There is a substantial need for punishment and deterrence in this case. The defendant has demonstrated a clear pattern of criminal conduct going back to 2011 when he was a young man. He has a history of DUI and related offenses, illegal drug use, and committing crimes on supervision. His criminal history is not overrepresented and it does not overstate his likelihood of recidivism. To the contrary, his criminal history shows a clear inclination to recidivate. Supporting this conclusion is the defendant's conduct in this case.

Here, from 2014 to 2015, the defendant engaged in several different fraud/identity theft schemes—like the Venmo, ScoreBig, and "bust out" schemes. In the fall of 2015, the defendant was notified by FBI he was under investigation. The defendant proffered with the government and began proactively working with the government in connection with an unrelated investigation. While cooperating with the government, the defendant secretly designed and committed the multi-million-dollar identity theft and loan fraud scheme involving PenFed and USAA customers charged in Count 1. Thus, when the defendant should have been on his best behavior, he was at his worst. The defendant's history of brazen disregard for authority and the law calls out for a substantial Guidelines sentence.

IV. Defense objections to the "bust out" activity set forth in PSR.

The government has reviewed the information it acquired in the course of its investigation regarding the defendant's "bust out" scheme. The information concerning the "bust out" scheme should be included in the PSR as relevant conduct. However, the government agrees with the defense that certain changes should be made that section of the PSR.

First, in his objections to the PSR, the defendant agrees that he intentionally and artificially inflated credit limits on credit and debit cards in order to obtain access to credit he otherwise could not. This is a core aspect of "bust out" fraud. The defendant obtained access to—and in fact used—credit he would not have been granted, had he not fraudulently made worthless payments on the cards in order to mislead the banks into thinking that he had more available credit than he did. Although the defendant may have paid back some of the credit and debit cards after busting them out, he still fraudulently obtained access to more credit, in doing so, exposed financial institutions to additional losses. To that point, the defendant was unable to pay back all of the credit and debit cards he busted out. According to Bank of America, the defendant still owes approximately $13,000 on one of the cards he busted out.

Next, the defense is correct that the defendant did not "bust out" stolen credit cards in the traditional sense. It is more accurate to state that he used stolen credit cards to purchase expensive things for his own personal enrichment. More specifically, the defendant's bust out scheme was closely related to his simultaneous use of stolen credit card information. For instance, in January 2015, the defendant used stolen credit card information to make substantial purchases on a Royal Caribbean cruise—the same cruise on which the defendant "busted out" a Bank of America debit card registered to one of his business. Also in January 2015, the defendant used stolen credit card information to purchase a trip on Norwegian Cruise Line, although the defendant, his current wife, and her child never actually travelled on the cruise. Based on these corrections and modifications, the government proposes the PSR paragraphs 43-46 be replaced with the following:

> 43. From in or around July 2014 to in or around December 2015, Defendant further attempted to defraud, and in fact defrauded, financial institutions and other business by (1) "busting out" several credit and debit cards in the name of the defendant or his businesses, and (2) using stolen credit card information to make substantial unauthorized purchases.
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> 44. It was part of the scheme that the defendant ran up significant balances on credit or debit cards in a short period of time by making substantial personal expenditures and cash advances with the intention of defrauding financial institutions by gaining access to additional credit lines that he knew he could not obtain without manipulating worthless payments to the cards.
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> 45. It was further part of the scheme that the defendant intentionally made worthless online payments on these credit and debit cards using account numbers with insufficient funds, thereby keeping the line of credit in place, or even increasing the line of credit with the appearance of a payment, so that defendant could make significant additional purchases and cash withdrawals from these credit and debit cards before the payment was dishonored or returned, intending to expose the financial institutions to potential losses by exceeding the available credit.

46. Defendant also purchased on the Internet stolen credit card information of individual identity theft victims and used that information to make substantial unauthorized, personal purchases, including expensive cruise vacations. By busting out credit and debit cards and using stolen credit card information, the defendant attempted to cause and caused Bank of America, Citibank, and individual merchants to be exposed to losses totaling more than $45,000.

Finally, according to the Government's investigation, the amounts set forth in the table in paragraph 53 of the PSR associated with this part of the defendant's conduct should be modified. The Government will provide the Probation Officer, the Court, and defense counsel a proposed corrected table. The Government agrees with the Probation Officer that because this particular conduct was not charged or agreed to in the plea agreement, it should not be part of the restitution order.

Respectfully submitted,

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By: /s/ Paul M. Flannery

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Paul M. Flannery
Paul M. Flannery
Assistant U.S. Attorney